IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 390 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATILAL LALJIBHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MR BS SUPEHIA for Appellant(s) : 1 – Appointed by Legal Aid Committee
MR. K.T.DAVE, APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 6.12.2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. A six year old female child was subjected to sexual abuse by the Appellant – Ratilal Laljibhai Vasava (“the accused” for short). The accused was therefore charged and tried by the learned Additional Sessions Judge, Bharuch in Sessions Case No. 58 of 1999 for commission of the offence punishable under Sections 363, 366, 376(2)(f), 323, 506(2) of Indian Penal Code (“IPC” for short).

2. At the end of the trial, the accused was found guilty of the offences with which he was charged, resultantly he was convicted vide judgement and order dated 11.3.2002 for the offences punishable under Sections 363, 366, 376(2)(f), 323, 506(2) IPC and sentenced to suffer RI for one year and fine of RS.200/- in default of payment of fine SI of 30 days for offence punishable under Section 323 IPC, RI for one year and fine of RS.200/- in default of payment of fine, SI for 30 days for offence punishable under Section 506(2) IPC, RI for 5 years and fine of Rs.200/- and in default of payment of fine, SI for 30 days for the offence punishable under Section

363, RI for 5 years and fine of Rs.200/- in default of payment of fine SI for 30 days for offence punishable under Section 366, and RI for 10 years and fine of Rs.2000/- in default of payment of fine, SI for 4 months for the offence punishable under Section 376(2)(f) IPC. It is also ordered that all the sentences shall run concurrently. It is this judgement and order, which has given rise to the instant Appeal, filed under Section 374 of the Code of Criminal Procedure ("the Code" for short), at the instance of the accused.

3. The prosecution case as disclosed from the FIR as well as unfolded during trial is as follows.

3.1 PW-1 – Pravinbhai Ganpathbhai Parmar, Postman, serving in the Postal Department, was residing with his wife Kanaben Parmar, 2 minor children and mother Ujmaben at village Samni, Taluka Amod. Out of the two daughters elder, who was the victim of rape (Ms. 'X') was studying in standard I in primary school of the said village. On the day of incident, i.e. on 13.1.1999 Ms. 'X' came to house at 1:00 – 1:30 PM from her school, in recess. Thereafter she went back to school at about 2:30 PM. His nephew Pankaj who was studying in standard I came at 5 O' Clock with the

school bag of Ms. 'X'. PW-1, therefore inquired about Ms. 'X'. Pankaj replied that Ms. 'X' did not come to school after recess, therefore he brought her school bag. They, therefore went to inquire and search her. They first contacted Sudhaben, class teacher of Ms. 'X'. She told that Ms.'X' did not come to school. They then went to Government dispensary, where, behind the Nurse Quarters they saw one person committing rape on Ms. 'X' after removing her underwear. They immediately rushed and caught the accused, who was ravishing Ms. 'X'. During inquiry he gave his name as Ratilal, Laljibhai Vasava and he was residing at village Manubar, and is real brother of Pushpaben Budhabhai Vasava residing in Adivasi Falia, Mota Bhilawada. Ms. 'X' started crying loudly in a close embrace of her mother and told that while she was going to the school from home after recess, the accused caught her in the way nearby the school and took her to the bush behind the dispensary and after pressing her mouth, threatened to kill her. The accused took off her underwear and thrown it, and gave her a slap and thus frightened to kill her and thereafter he started ravishing her. When she started shouting, the accused pressed her mouth. At that time Chiragbhai

Manharbhai Parmar also reached there. The accused was trying to flee away but he and Chirag caught hold of him. His wife Kantaben and his mother Ujamben saw the urinal organ of Ms. 'X' which was found dry and swollen and was bleeding. The accused was brought to village chowk where the Sarpanch Bhailalbhai Mohanbhai Patel met at the Panchayat Office and he was informed, so he advised to take the accused to the police station Amod to lodge a complaint. A three wheeler tempo of one Brajaysinhraj was taken from the village chowk. All of them took the accused to Amod Police Station where they lodged the complaint.

3.2 The complaint for the aforesaid incident was lodged by PW-1-Pravinbhai Ganpathbhai Parmar, father of Ms. 'X' at Amod Police Station, which came to be registered against the accused for commission of the offences punishable under Sections 363, 366, 376(2)(f), 323, 506(2) IPC.

3.3 The complaint was registered by PW-14 Jayprakash Sutaria, PSI. He thereafter carried out the investigation. The said complaint is on record at exh.11. During the course of investigation, he has drawn the panchnama of the person of Ms. 'X' as well as

the accused. Ms. 'X' was sent to hospital for medical check-up, by sending the police yadi. Clothes of the accused were also recovered after drawing the panchnama and sent to FSL. He recorded the statement of the witnesses, prepared the panchnama of the scene of offence, recovered the underwear as well as clothes of Ms. 'X' by drawing the panchnama, which were sealed and sent to FSL.

3.4 After obtaining the FSL report, and the certificate issued by the Doctor, since sufficient incriminating evidence was found against the accused, he was charge- sheeted in the Court of learned Chief Judicial Magistrate, Amod.

3.5 As the offence under Section 376(2)(f) of the IPC is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Amod committed the case to the Sessions Court, Bharuch.

3.6 The learned Additional Sessions Judge, Bharuch, to whom the case was made over for trial, framed charge against the accused for commission of the offences punishable under Sections 363, 366, 376(2)(f), 323, 506(2) IPC. The charge was read over and explained to the accused. As the accused pleaded not

guilty to the charge, he was put to trial and tried by the learned Additional Sessions Judge, Bharuch in Sessions Case No. 58 of 1999.

3.7 To prove the culpability of the accused, the prosecution has, in all, examined as many as 15 witnesses, details of which, given in paragraph 9 of the impugned judgment and order, are as under:

Witness	**Name**	**Status**	**Exhibit**	**Page No.**
PW-1	Pravinbhai Ganpathbhai Parmar	Father of the Victim.	10	37
PW-2	Ms.'X'	Victim	12	44
PW-3	Kantaben	Mother of the victim.	13	47
PW-4	Kashiben Manharbhai	Panch witness	14	52
PW-5	Jayantibhai Dahyabhai	Panch witness	17	55
PW-6	Ashokbhai Bavjibhai	Panch witness	21	60
PW-7	Ujjamben	Grandmother of the victim.	24	65
PW-8	Dr. Rashmikant C. Mehta	Medical officer	25	68

Witness	Name	Status	Exhibit	Page No.
PW-9	Sudhaben D. Chauhan	Teacher	31	86
PW-10	Dipsingh N. Naroliya	Talati-cum-Mantri	32	88
PW-11	Prajyasingh A. Raj	Witness	34	90
PW-12	Dr. Harisingh J. Raval	Gynecologist	36	92
PW-13	Dr, Oratunaveb P. Joshi	Witness	37	93
PW-14	Jayprakash D. Sutariya	PSI, Amod Police Station.	44	110
PW-15	Chirag Manharbhai Parmar	Witness	48	128

3.8 To prove the charge leveled against the accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which, enumerated in paragraph 10 of the impugned judgment and order, are as under:

Srl. No.	Particulars	Exhibit	Page No.
1.	Complaint	11	42

Srl. No.	Particulars	Exhibit	Page No.
2.	Panchnama of the person of the victim.	16	54
3.	Panchnama of the person of acused.	20	59
4.	Panchnama of the scene of offence.	23	63
5.	Refund note to CHC.	26	71
6.	Case paper of victim.	27	72
7.	Medical certificate of victim.	28	75
8.	X-ray of victim.	29	83
9.	Medical certificate of victim issued by Civil Hospital.	30	84
10.	Birth record of victim.	33	89
11.	Yadi of PSI, Amod.	38	97
12.	Medical certificate of victim.	39	98
13.	Medical certificate of victim issued by CHC, Amod.	40	102
14.	Police Yadi	41	103
15.	Medical case paper of accused.	42	104
16.	Medical certificate of accused issued by CHC, Amod.	43	109

Srl. No.	Particulars	Exhibit	Page No.
17.	Letter dated 25.01.1999 sent to Director FSL.	45	114
18.	FSL report.	46	117

3.9 After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge, Bharuch, explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code.

3.10 In his further statement, the accused denied the case of the prosecution by reiterating that he has been falsely implicated. He was not at the spot of the occurrence. He was never involved in the offence as he was not found from the place as alleged by the prosecution, and he was arrested subsequently and by taking him into the town he was beaten. However, he did not lead any evidence nor did he examine any witness in support of his defence.

3.11 On appreciation, evaluation,

analysis and the scrutiny of the evidence adduced by the prosecution, the learned Additional Sessions Judge, Bharuch came to the conclusion that Ms. 'X', at the relevant time, was less than 6 years of age and she was kidnapped by the accused from the lawful guardianship of her father with a view to rape her. It is also held by the learned trial Judge that the accused gave threat to kill her, and while committing rape, the accused also caused injuries to her Therefore, the prosecution successfully established the charges leveled against the accused for commission of the offences as alleged in the charge sheet. The learned Additional Sessions Judge therefore held the accused guilty of the offence of rape, and the accused was convicted and sentenced, to which the reference is made in earlier paragraphs of this judgement, which has given rise to this appeal.

4. Mr. B.S.Supehiya, learned advocate of the accused, appointed by legal aid committee to assist the accused, has contended that the accused has been falsely implicated for commission of the offence of rape. The learned trial Judge has not considered the said defence at all. Therefore, according to him, the learned trial Judge has committed

serious error in not appreciating the evidence, which is on record, in its true perspective. According to him, no reliable, trustworthy and unimpeachable evidence has been produced by the prosecution. He, therefore, urged to allow this Appeal, and to acquit the accused of the offences with which he was charged. Alternatively, Mr. B.S.Suphiya, the learned advocate urged to reduce the quantum of punishment imposed by the learned Additional Sessions Judge, Bharuch.

5. Per contra, Mr. K.T.Dave, the learned APP appearing for the Respondent – State of Gujart has submitted that there is a reliable, clinching and trustworthy evidence, which, unequivocally and unerringly proves that the accused has committed rape on a six-year-old girl, and now-a-days, offences of sexual harassment and sexual offence of rape, more particularly upon minor girls, are on increase. According to him, the testimony of the victim, her mother, panch witnesses and Medical Officer, who has examined the victim, FSL report are so clinching and they corroborate each other that no doubt is left that the accused has committed rape on a six-year-old girl. The medical evidence established that there was a penetration of

penis by the accused in the vagina of the victim, as a result of which the vagina of the victim was injured and hymen was ruptured. Therefore, according to him, prosecution has established the charge leveled against the accused for commission of the offence of rape beyond reasonable doubt, and more particularly, looking to the age of the victim, no mercy can be shown by reducing the sentence imposed upon him. The Appeal, therefore, lacks merit and deserves to be dismissed. He, therefore, urged to dismiss the Appeal.

6. This Court has considered the submissions advanced by Mr. B.S.Supehiya learned advocate of the accused and Mr. K.T.Dave, learned APP for the respondent – State of Gujarat, at length. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections.

7. The charge leveled against the accused is that on 13.1.1999 he kidnapped Ms. 'X' on the way to her school, in recess, threatened to kill her and brought her behind the bush of

Government dispensary and after removing her underwear committed rape on her. The accused was caught red-handed from the scene of offence by PW-1 – complainant – Pravinbhai Ganpathbhai Parmar and PW-15 Chirag Manharbhai. The complaint for the aforesaid incident was lodged at Amod Police Station, which is on record at exh.11.

8. To bring home the charge leveled against the accused, the prosecution has examined and relied upon the oral testimony of PW-1 – Pravinbhai Ganpathbhai Parmar, father of Ms. 'X' at exh.10, page no. 37, who has inter alia testified that he was serving in postal department. The incident took place in January 1999. He inquired about her daughter. He learnt that her daughter did not attend the school after recess. During inquiry he found the accused committing rape on Ms. 'X' just behind the Nurse Quarters of Government Hospital. The accused tried to flee away from the scene of offence. He and PW-15 – Chirag Manharbhai caught the accused red-handed and thereafter he was brought to Panchayat office. From there he was taken to Amod Police Station, where he lodged a complaint which is on record at exh.11. It may be noted that he successfully withstood the test of cross-examination. Nothing substantial has been brought out and there is

also no contradiction in the written complaint as well as in his oral testimony.

9. The prosecution thereafter examined and relied upon the oral testimony of PW-2 Ms. 'X' at exh.12, page no.44. She inter alia testified the entire incident in her own language as per the incident which had taken place. It is not necessary to reiterate her evidence in her own language. Suffice it to say that she has narrated the entire episode as per the occurrence of the event. She has also identified the accused in the Court. She has also testified that her father – PW-1 – Pravinbhai Ganpathbhai Parmar – complainant and PW-15 Chirag Manharbhai reached the place of incident where the accused was committing rape on her. The accused was caught red-handed from the scene of offence. She has also stated that she has disclosed this fact to her father and mother. She has also testified about the injuries sustained by her. During cross-examination she has denied all the suggestions put by the learned advocate of the accused. She has denied the defence of the accused that alleged incident had not taken place. According to this Court her evidence is clinching which also corroborates the complaint as well as oral testimony of PW-1- Pravinbhai Ganpathbhai Parmar at exh.10, page 37. It is settled

legal proposition of law that in case of rape if the evidence of the prosecutrix or the victim inspires confidence, her evidence need not require corroboration.

10. The prosecution thereafter examined and relied upon the oral testimony of PW-3 – Kantaben Valjibhai Parmar at exh.13, page 47, the mother of Ms.'X', PW-7, Ujmaben Ganpathbhai Parmar, the grandmother of Ms 'X' at exh. 24, at page 65. They have also testified as per the incidence. It may also be appreciated that all the panch witnesses have also supported the prosecution case.

11. The prosecution thereafter examined and relied upon the oral testimony of PW-15 – Chirag Manharbhai at exh. 48, page 128 who has caught the accused and took him to gram Panchayat office.

12. The prosecution thereafter has examined and relied upon the oral testimony of PW-8 Dr. Rashmikant Chimanlal Mehta, at exh.25, page 68. He has testified that on 13.1.1999 he was serving as a Medical Officer in Civil Hospital, Bharuch. Ms. 'X' was brought to him with the reference note of Medical Officer, Amod, who examined her. During examination, he found injury on the left knee. According to him Ms. 'X' was aged

about 6-7 years. He thereafter referred her to Gynecologist PW-12 – Dr. Harisinh Rawal at exh.36, page 92 to verify whether rape was committed on Ms. 'X'. During examination Dr. Rawal noted the wounds in her vagina, it was extended up to hymen of the vagina.

13. The prosecution has also examined PW-12 – Dr. Harisinh Rawal at exh. 36, page 92 and PW-13 – Dr. Pratimaben Joshi at exh.37, page 93. Both of them have examined the victim Ms. 'X'. They have testified about the injuries sustained by Ms. 'X'. They have also stated the similar version which have been stated by PW-8 Dr. Rashmikant Chimanlal. They have also produced the certificates at exhs. 27, 28, 29, 39. From the perusal all these certificates, it is seen that they have noted the injuries sustained by Ms. 'X', which corroborate the oral testimony of Ms. 'X'.

14. In view of the aforesaid evidence, according to this Court, the sole testimony of Ms. 'X' herself is sufficient to establish the charge of rape against the accused. However, her oral testimony is corroborated by the evidence of Dr. Rashmikant Chimanlal Mehta, Dr. Harish Rawal and Mr. Pratimaben Joshi. A perusal of the FSL report also unequivocally suggests that semen was found but group could

not be detected. On sample no.11, vaginal smear of Ms. 'X', semen and blood was found but group could not be detected. On sample 12, pant of the accused, semen was found.

15. In view of the aforesaid discussion, according to us, there is no manner of doubt that the prosecution has established the charge leveled against the accused for commission of rape on a six-year-old girl. Therefore, it is not necessary for us to discuss the evidence of other witnesses examined by the prosecution.

16. On close scrutiny of the evidence, we find no infirmity in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Additional Sessions Judge, Bharuch. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence as according to us, no other conclusion is possible except the one reached by the learned Additional Sessions Judge, Bharuch.

17. No new argument was advanced. No new criticism is offered. No infirmity in the reasoning of the learned Additional Sessions Judge is pointed out. The evidence has been carefully analysed and fully appreciated in

the closely reasoned judgement with which we fully concur. We do not think it right to invest public time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of form.

18. In aforesaid view of the matter, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence.

19. The manner and way in which the offence of rape was committed on a six-year-old girl, no leniency for reduction of sentence can be shown upon the accused.

20. At this stage, it would be appreciable to refer to the latest judgment of the Supreme Court in the case of State of M.P. v. Santosh Kumar, (2006) 6 SCC 1. The Supreme Court has considered the “adequate and special reasons” for awarding of sentence below the statutory minimum in the case of offence of rape. In the said case, a six-year-old child was subjected to sexual abuse by the respondent. The trial Court found the respondent guilty of the offence punishable under Section 372(2)(f) IPC. The respondent was sentenced to undergo 10 years' RI with a fine of Rs.500/- with default stipulation. In the

appeal filed before the High Court, the accused did not question the conviction, but prayed for reduction in sentence. The High Court reduced the sentence for the offence punishable under Section 376(2)(f) IPC to 5 years, while maintaining the sentence in respect of other offences. The only ground indicated by the High Court to reduce the sentence was the young age of the accused and he being a member of the Scheduled Tribe. In the said circumstances, the questions that arose before the Supreme Court were the proper sentence and acceptability of reason which weighed with the High Court for reducing the sentence.

Allowing the appeal and restoring the minimum mandatory statutory sentence imposed by the trial Court, the Supreme Court **Held**:

"Both, in cases of sub-sections (1) and (2) of Section 376 the court has the discretion to impose a sentence of imprisonment less than prescribed minimum for "adequate and special reasons". If the court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum. In order to exercise the discretion of reducing the sentence, the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which

would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated.

What is applicable to the trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court in the present case is the young age of the accused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative.

It is to be noted that the victim in the instant case is a child who was about 6 years of age at the time of commission of offence. Section 376(2) IPC provides for a more stringent punishment when the victim is under 12 years of age. In the instant case, the High Court was clearly in error in reducing the sentence without recording any adequate and special reason in imposing a lesser sentence."

21. Applying the principles laid down by the Supreme Court in above referred to judgment to the facts of the present case, it is not

in dispute that the victim is a six-year-old girl, therefore, the sentence of 10 years' RI imposed upon the accused, which is a minimum sentence, does not call for any interference.

22. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the learned Additional Sessions Judge, Bharuch, and hence, this Appeal lacks merit and deserves to be dismissed.

23. For the foregoing reasons, the Appeal fails and is accordingly dismissed.

(A.M.Kapapdia,J)

(K.A.Puj,J)

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